IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.850 OF 2005
IN
SUM.SUIT NO.4846 OF 2000

Canara Bank. ..Plaintiff.

V/s.

M/s.Veer Traders. ..Defendant.

Ms.Yamini Chandran i/b Umesh Shetty & Co. for plaintiff.

Mr.Harnam Singh Khalsa for defendant.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 12, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. By this chamber summons, plaintiff seeks to amend cause title of the plaint and Vakalatnama by substituting description of the defendant instead of proprietor Mr. Deepak Shah as proprietor Mr. Vipul Shah. According to the plaintiff, plaintiff filed suit against the proprietor of proprietary concern under bonafide impression that Mr.Deepak Shah is the proprietor of the defendant proprietary concern M/s Veer Traders. However, now it has transpired that proprietor is not Mr.Deepak Shah but Mr. Vipul Shah.

In view of the said information revealed during pendency of the suit, the plaintiff seeks to amend the plaint and the Vakalatnama.

3. This application is however, opposed by the defendants on the argument that the summons for Judgment has already been withdrawn on 3rd December, 2002. It is then contended that although the fact that Mr.Vipul K. Shah is proprietor was made known to the plaintiff long back, only now the present application has been moved. On this count no indulgence be shown to the plaintiff. Besides, the claim in the suit is already time barred.

4. Having considered rival submissions, in my opinion, the amendment sought by the plaintiff will have to be granted in the interest of justice. It is not in dispute that the suit is filed against the proprietor of the proprietary firm. The plaintiff described the name of the proprietor as Deepak K. Shah. However, now it has transpired that the proprietor of the firm is Mr.Vipul K. Shah. It is a matter of record that advocate Mr. Harnam Singh Khalsa entered appearance in the main proceedings on the basis of Vakalatnama signed by Mr.Deepak K. Shah as well as Mr.Vipul K. Shah, who is proprietor of

Veer Traders. In that sense, no prejudice will be caused to the defendant, if amendment was to be granted.

5. The argument that application should be dismissed on the ground of delay and latches does not commend to me. It is rightly contended on behalf of the plaintiff relying on the assertions made in the affidavit, which cannot be doubted that the advocate who was handling the file had left service of advocates' firm in January, 2003, soon after Summons for Judgment was withdrawn on 3rd December, 2002. The matter therefore, remained unnoticed and was not persued till the mistake was realised in the office of the Advocate. It is well settled that for the mistake of the advocate litigants should not suffer. Immediately, the plaintiff took out chamber order in February, 2005 on the advice given by the advocate which however, was disposed of on 12th June, 2005 as the appropriate remedy for the relief claimed was Chamber Summons. Accordingly, present chamber summons has been filed in July, 2005. In other words, the plaintiff was pursuing the wrong remedy under the mistaken instructions of his advocate. Accordingly, time taken for moving the present application will have to be excused in the interest

of justice.

6. Argument that Summons for Judgment has been dismissed as withdrawn, disentitles the plaintiff to carry out amendment does not commend to me- because question has not been raised or decided on merits, one way or other. For, the said Summons for Judgment is allowed to be withdrawn.

7. So far as the objection regarding the bar of limitation, it is well settled that the issue of limitation will have to be considered at the appropriate stage of trial. That cannot be the basis for rejecting prayer for amendment. In any case the question of limitation will not arise in the context of allowing the plaintiff to correct the misdescription in the cause title.

8. Viewed in this perspective, Chamber summons ought to be granted in terms of prayer clause(a) and (b), however, on condition that plaintiff would pay costs to the defendant quantified at Rs.5,000/-. Costs to be paid within one week. Amendment to be carried out within four weeks.

9. All questions are left open. It is made

clear that amendment is granted without prejudice to the rights and contentions of the parties in so far as merits of the case is concerned.